Docket No. HHD-CV20-6131803-S

THE CT FREEDOM ALLIANCE, LLC; JENNA MATOS, Individually, and as ppa for CHILD #1 and CHILD #2; RAENA FERGUSON, Individually, and as ppa for CHILD #3; MICHELLE CRAWFORD Individually, and as ppa for CHILD #4, CHILD #5, and CHILD #6; and RUTH BRIGANTTI, Individually, and as ppa for CHILD #7, CHILD #8, CHILD #9 and CHILD #10	:	SUPERIOR COURT JUDICIAL DISTRICT OF HARTFORD SEPTEMBER 26, 2020
Plaintiffs, v. STATE OF CONNECTICUT DEPARTMENT OF EDUCATION; and MIGUEL CARDONA Defendants.	:	

BRIEF IN SUPPORT OF PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER OR IN THE ALTERNATIVE, A PRELIMINARY INJUNCTION

Plaintiffs CT Freedom Alliance, LLC; Jenna Matos, individually, and as ppa for Child #1 and Child #2; Raena Ferguson, individually, and as ppa for Child #3; Michelle Crawford, individually, and as ppa for Child #4, Child #5 and Child #6; and Ruth Brignatti, individually, and as ppa for Child #7, Child #8, Child #9 and Child #10 commenced this action because the Defendants conduct unlawfully and unnecessarily places Children #1 through #10 (the "Children"), and all school children in Connecticut, in immediate danger of serious and permanent damage to the children's health, safety and emotional well-being. They submit this memorandum in support of a temporary restraining order or in the alternative a preliminary injunction prohibiting the Defendants, from requiring children to wear face coverings, masks,

ORAL ARGUMENT REQUESTED
TESTIMONY REQUIRED

or face shields (hereafter "masks" or "facemasks") at any time during the school day (whether indoors or outdoors), during after-school programs, or during transport to and from school property, and from refusing to allow any child from attending school and receiving in-person education because of the child's failure or refusal to wear a facemask. Expedited consideration is necessary because the severe irreparable physical and emotional harm and risk harm the Plaintiffs and the Children are incurring now.

I. INTRODUCTION

Pursuant to Governor Ned Lamont's Executive Orders, the Defendant Connecticut State Department of Education ("SDE"), through its Commissioner, Defendant Miguel Cardona, have issued a guidance document titled "Adapt, Advance, Achieve: Connecticut's Plan to Learn and Grow Together" (hereinafter, "AAA"), **Exh. 1**.[1] The AAA mandates that all children receiving in-person instruction at any public or private school in Connecticut must, at all times during the day wear a facemask but for a few short "mask breaks" the children are to be allowed during the school day. The Defendants' facemask mandate on children, especially young children, puts them in very significant danger of short-term and long-term physical and psychological harm, while doing virtually nothing to prevent the spread of COVID-19. In short, the Defendants' mandates prevent the children of this state, including the Plaintiffs' children, from receiving the education to which they are constitutionally entitled without putting their lives and safety at grave risk. These new mandates were imposed on the Plaintiffs

[1] https://portal.ct.gov/-/media/SDE/COVID-19/CTReopeningSchools.pdf.

and the Children without the due process required under Conn. Gen. Stat. § 4-168, and violate Article Eighth of the Connecticut Constitution.

Plaintiffs Jenna Matos, individually, and as ppa for Child #1 and Child #2; Raena Ferguson, individually, and as ppa for Child #3; Michelle Crawford individually, and as ppa for Child #4, Child #5, and Child #6; and Ruth Brigantti, individually, and as ppa for Child #7, Child #8, Child #9 and Child #10 (together, the "Individual Plaintiffs"), concerned parents and supporters of Plaintiff The CT Freedom Alliance, LLC ("CTFA"), and similarly situated individuals who are school-aged children or parents of same, have a fundamental, constitutionally guaranteed right for the children to receive a free and adequate education. Because of the Defendants' actions in refusing to allow the Children to attend school without wearing a facemask, the Individual Plaintiffs have been illegally prevented from exercising these rights. Because the Defendants have mandated that the Children wear facemasks all day, it is now impossible for the Individual Plaintiffs and similarly-situated CTFA supporters to receive their constitutionally guaranteed education. Because the Defendants' conduct has prevented, and continues to prevent, the Plaintiffs and others like them from receiving adequate educational instruction, and because the facemask mandate puts the Children at immediate risk of serious physical and psychological harm, the Defendants' conduct must be enjoined.

II. STATEMENT OF RELEVANT FACTS

1. Plaintiffs Jenna Matos, individually, and as ppa for Child #1 and Child #2

Plaintiff Jenna Matos (hereinafter, "Matos") was at all times set forth herein, a resident

of the town of Manchester in the State of Connecticut. Matos is the parent of two children, ages five and seven, (known herein as "Child #1" and "Child #2," respectively) who are enrolled as students at St. James School in Manchester, Connecticut for the 2020-2021 academic year. Matos opposes the Defendants' mandate that her children be required to wear facemasks in order to receive their fundamental right to an education. Matos and her children fear for the children's health and safety if required to wear facemasks at school.

2. Plaintiff Raena Ferguson, individually, and as ppa for Child #3

Plaintiff Raena Ferguson (hereinafter, "Ferguson") was, at all times set forth herein, a resident of the town of Niantic in the State of Connecticut. Ferguson is the parent of a child, aged 13 years (known herein as "Child #3"), who is enrolled as a student at East Lyme High School in East Lyme, Connecticut for the 2020-2021 academic year. Ferguson opposes the Defendants' mandate that her children be required to wear facemasks in order to receive their fundamental right to an education. Ferguson and her child fear for the child's health and safety if required to wear facemasks at school.

3. Plaintiff Michelle Crawford individually, and as ppa for Child #4, Child #5, and Child #6

Plaintiff Michelle Crawford (hereinafter, "Crawford") was, at all times set forth herein, a resident of the Town of Marlborough, in the State of Connecticut. Crawford is the parent of three children, ages eight, ten, and eleven (known herein as "Child #4," "Child #5," and "Child #6," respectively) who are enrolled as students at Marlborough Elementary, and RHAM Middle School in Marlborough, Connecticut for the 2020-2021 academic year. Crawford opposes the Defendants' mandate that her children be required to wear facemasks

in order to receive their fundamental right to an education. Crawford and her children fear for the children's health and safety if required to wear facemasks at school.

4. Plaintiff Ruth Brigantti, individually, and as ppa for Child #7, Child #8, Child #9 and Child #10

Plaintiff Ruth Brigantti (hereinafter, "Brigantti") was, at all times set forth herein, a resident of the Town of Farmington, in the State of Connecticut. Brigantti is a parent of four children, ages five, ten, fourteen and fifteen (known herein as "Child #7," Child #8," "Child #9," and "Child #10" respectively) who are respectively enrolled as students at Union School, Westwood Upper Elementary School, and Farmington High School in Farmington, Connecticut for the 2020-2021 academic year. Brigantti opposes the Defendants' mandate that her children be required to wear facemasks in order to receive their fundamental right to an education. Brigantti and her children fear for the children's health and safety if required to wear facemasks at school.

5. Plaintiff The CT Freedom Alliance, LLC

Plaintiff CT Freedom Alliance, LLC (hereinafter, "CTFA") was, at all times set forth herein, a Limited Liability Company formed under Connecticut General Statutes §§ 34-243 to 34-283d, inclusive, and at all times set forth herein, had a principal place of business at 7 Greenfield Avenue, Ridgefield, CT 06877. Plaintiff CTFA was, at all times set forth herein, an organization consisting of over 2,100 members, the majority of whom are Connecticut residents, and a substantial proportion of whom are parents of children attending public or private schools in the State of Connecticut, and who desire to send their children to school without a requirement that they wear facemasks. CTFA's members fear for the Children's

health and safety if required to wear facemasks at school.

6. Defendant State of Connecticut Department of Education

Defendant State of Connecticut Department of Education (hereinafter, the "SDE") is an agency of the State of Connecticut.

7. Defendant Miguel Cardona

Defendant Miguel Cardona (hereinafter, "Cardona") was, at all times set forth herein, the Commissioner of the SDE.

III. ARGUMENT

A. STANDARDS FOR ISSUING A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

For a court to grant injunctive relief, the movant must demonstrate four elements: (1) irreparable and imminent injury; (2) lack of an adequate remedy at law; (3) likelihood of success on the merits; and (4) that a balancing of the equities favors a granting of the injunction. *Waterbury Teachers Assn. v. Freedom of Information Commission*, 230 Conn. 441, 446, 645 A.2d 978 (1994); R.D. *Scinto v. Sosin*, 2001 Conn. Super. LEXIS 3802, at *2 (Conn. Super. Ct. Aug. 31, 2001) ("A party seeking injunctive relief has the burden of alleging and proving irreparable harm and lack of an adequate remedy at law."). This criterion necessarily requires consideration of the probable outcome of the litigation. *Griffin Hospital v. Commission on Hospitals & Health Care*, 196 Conn. 451, 457, 493 A.2d 229 (1985).

As is shown herein, without an injunction, the Plaintiffs and their children will suffer significant irreparable and imminent injury to their physical and mental health which no money damages could possibly remedy. In fact, the Plaintiffs have not even sought money

damages in their prayer for relief. The facts, law and circumstances of this case, including the overwhelming body of scientific literature, clearly establish that the Plaintiffs are likely to succeed on the merits of their claims and any objective balancing of the equities will favor granting the requested injunction.

B. THE PLAINTIFFS AND THEIR CHILDREN ARE BEING IRREPARABLY HARMED IN A MANNER MONEY DAMAGES CANNOT POSSIBLY REPAIR

1. Forcing Children to Wear Facemasks for Long Periods Causes Them Severe Physical Injuries

Scientific study after scientific study over the course of many years have concluded that wearing facemasks for extended periods of time, as the Defendants are compelling the Children to do through the AAA, puts the Children in imminent risk of significant long-term physical injury.

It has long been recognized that wearing a mask for more than a few minutes causes a significant reduction in a person's blood oxygen level. See A. Beder, et al., *Preliminary report on surgical mask induced deoxygenation during major surgery*, Neurocirugía (2008), **Exh. 2**.[2] Wearing masks for extended periods increases incidences of headaches and negatively affects work performance. See Jonathan J.Y. Ong, et al., *Headaches Associated With Personal Protective Equipment – A Cross-Sectional Study Among Frontline Healthcare Workers During COVID-19*, Headache, the Journal of Head and Face Pain (May 2020), **Exh. 3**.[3]

[2] http://scielo.isciii.es/pdf/neuro/v19n2/3.pdf.
[3] https://headachejournal.onlinelibrary.wiley.com/doi/full/10.1111/head.13811

Most children wear cloth masks. See Brittany Dionne, *How hard is it to find a medical grade face mask?,* WBRC News, April 18, 2020, **Exh. 4**.[4] But wearing a cloth mask can actually *increase* the risk of contracting Covid-19 and other respiratory infections. *See* MacIntyre CR, Seale H, Dung TC, et al., *A cluster randomised trial of cloth masks compared with medical masks in healthcare workers*, BMJ Open 2015; 5: e006577, US National Library of Medicine, National Institutes of Health, doi: 10.1136/bmjopen-2014-006577, April 22, 2015, **Exh. 5**.[5] ("This study is the first [Randomly Controlled Trial] of cloth masks, and the results caution against the use of cloth masks. This is an important finding to inform occupational health and safety. *Moisture retention, reuse of cloth masks and poor filtration may result in increased risk of infection.*") (emphasis added). Wearing masks all day creates a perfect environment for dangerous respiratory pathogen accumulation and causes low oxygen induced hypoxia. Colleen Huber, NMD, "*Masks Are Neither Effective nor Safe,"* PrimaryDoctor.Org, July 6, 2020, **Exh. 6**.[6] ("The foregoing data show that masks serve more as instruments of obstruction of normal breathing, rather than as effective barriers to pathogens. Therefore, masks should not be used by the general public, either by adults or children, and their limitations as prophylaxis against pathogens should also be considered in medical settings.") (citing 42 scientific studies). "Dr. Jenny Harries, England's deputy chief medical officer, has warned that it was not a good idea for the public to wear facemasks as the virus can get trapped in the material and causes infection when the wearer

[4] https://www.wbrc.com/2020/04/18/how-hard-is-it-find-medical-grade-face-mask/.
[5] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4420971/pdf/bmjopen-2014-006577.pdf
[6] https://www.primarydoctor.org/masks-not-effect

breathes in." Angela Betsaida B. Laguipo, BSN, "Reusing Masks May Increase Your Risk of Coronavirus Infection, Expert Says," News, Medical, Life Sciences, March 15, 2020, **Exh. 7**.[7]

Even the World Health Organization, which has repeatedly changed its position on universal masking, is adamant that if facemasks are not studiously worn correctly and kept sanitary, they are worse than ineffective, they can be downright dangerous. See Linda Lacina, *WHO updates guidance on masks for health workers and the public - here's what you need to know*, World Economic Forum (June 5, 2020), **Exh. 8**.[8] "People can infect themselves if they use contaminated hands to adjust a mask or repeatedly take it on or off," explained WHO Director-General, Dr Tedros Adhanom Ghebreyesus. "I cannot say this clearly enough. Masks alone will not protect you from COVID-19." *Id.* See also, Melkorka Licea, *"'Mask Mouth' Is a Seriously Stinky Side Effect of Wearing Masks."* New York Post, August 5, 2020, **Exh. 9**.[9] Even if they are able to keep the masks on for more than a few minutes at a time, children, especially young children, will be infecting themselves by touching their faces and their masks. They will be dropping the masks on the floor, coughing and sneezing in them, wearing them on their heads or under their chins. Failing to follow strict medical standards for wearing protective equipment and specification of sterilizing and cleaning often leads to "skin and mucous membrane injury, which may cause acute and chronic dermatitis, secondary infection and

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[7] https://www.news-medical.net/news/20200315/Reusing-masks-may-increase-your-risk-of-coronavirus-infection-expert-says.aspx
[8] https://www.weforum.org/platforms/covid-action-platform/articles/who-updates-guidance-on-masks-heres-what-to-know-now
[9] https://nypost.com/2020/08/05/mask-mouth-is-a-seriously-stinky-side-effect-of-wearing-masks/

aggravation of underlying skin diseases." Yan, et al., *"Consensus of Chinese Experts on Protection of Skin and Mucous Membrane Barrier for Health-Care Workers Fighting against Coronavirus Disease 2019."* Dermatologic Therapy, March 2020, e13310, **Exh. 10**.[10] Making a small child wear a mask on his/her face all day is a clear recipe for medical disaster.

Pediatric physicians and researchers around the world recognize the dangers to children of forcing them to wear facemasks at school. See e.g., Michelle Science MD, MSc, FRCPC, et. al., *COVID-19: Guidance for School Reopening*, Division of Infectious Diseases, The Hospital for Sick Children ("Sick Kids"), University of Toronto, Canada, **Exh. 11**.[11]

> • The use of [Non-Medical Masks ("NMMs")] in the school setting should be driven by local epidemiology with age-specific considerations.
> • When transmission in the community is low, the use of NMMs throughout the entire school day should not be mandatory for elementary, middle or high school students returning to school. But, NMM use should always be respected if a student chooses to wear one. Safe masking practices (e.g. proper wearing/storage/removal) should be reinforced with educational materials provided to parents, students and teachers.
> • Given the current epidemiology, the use of NMMs is not recommended for elementary school students.

Id. A Covid-19 cross-country study by the University of East Anglia in England found that a mask requirement was of no benefit and could even increase the risk of infection. Hunter, et al., *Impact of non-pharmaceutical interventions against COVID- 9 in Europe: a quasi-experimental study*,

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[10] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7228211/pdf/DTH-9999-e13310.pdf
[11] https://www.sickkids.ca/PDFs/About-SickKids/81407-COVID19-Recommendations-for-School-Reopening-SickKids.pdf

May 6, 2020, **Exh. 12**.[12] ("We found that closure of education facilities, prohibiting mass gatherings and closure of some non-essential businesses were associated with reduced incidence whereas stay at home orders, closure of all non-businesses and *requiring the wearing of face masks or coverings in public was not associated with any independent additional impact*.") (emphasis added).

2. <u>Forcing Children to Wear Facemasks for Long Periods mandated by the AAA Risks Causing Them Severe Mental and Psychological Injuries</u>

Similarly, children are psychologically traumatized in multiple ways by being forced to wear facemasks all day long at school. Doctors from around the country warn of the dangers to children of wearing facemasks all day. See e.g., Jeffrey I. Barke, M.D.*, Open the schools without politics*, American Thinker, June 10, 2020, **Exh. 13**:[13]

> Mandatory face coverings on children is very harmful to the child: learning is inhibited; critical interactions among students and between student and teacher are fractured; and the face covering is counterproductive, as kids will naturally touch their faces, thereby contaminating their covering. This new normal that many are advocating may well lead to a spike in childhood behavior problems such as learning disabilities, anxiety disorders, and depression, to name a few.

See also Kathleen M. Pike, PhD, *Why a Mask is Not Just a Mask*, Global Mental Health Programs, Columbia University, April 17, 2020, **Exh. 14**:[14]

> Many young children burst into tears or recoil when someone wearing a mask approaches. It's so common that some elementary schools

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[12] https://doi.org/10.1101/2020.05.01.20088260
[13] https://www.americanthinker.com/blog/2020/06/open_the_schools_without_politics.html
[14] https://www.cugmhp.org/five-on-friday/why-a-mask-is-not-just-a-mask

> prohibit masks at the school Halloween parade. One reason for this is that the development of facial recognition is relatively weak in young children. According to University of Toronto psychologist, Dr. Kang Lee, it is not until kids are about 14 years old that they reach adult skill levels in recognizing faces. Before then, kids tend to see individual facial features, rather than recognizing the person as a whole. By putting on masks, we take away information that makes it especially difficult for children to recognize others and read emotional signals, which is unsettling and disconcerting. These issues may be especially true for children with autism spectrum disorder, including Asperger's syndrome, who tend to have particular difficulties reading non-verbal cues.

Dr. Alice Kuo, President of the Southern California chapter of the American Academy of Pediatrics issued a statement criticizing Los Angeles County school reopening guidelines that require children wear masks as "not realistic or even developmentally appropriate for children." She explained that, "wearing masks throughout the day can hinder language and socio-emotional development, particularly for younger children." *Local Pediatricians Urge Collaborative Decision-Making About Reopening Schools*, Southern California chapter of the American Academy of Pediatrics, June 2, 2020, **Exh. 15**.[15]

Some of the serious psychological harms to children caused by extended mask wearing are tied to lack of facial and emotional recognition. See Christiane Bormann-Kischkel, *Face Recognition in Children*, Eur Arch Psychiatr Neurol Sci (1986) 236: 17-20, **Exh. 16**.[16] The use of salient visual speech cues is hidden by masks making learning difficult for young children. Kaylah Lalondea and Rachael Frush Holta, *Preschoolers Benefit From Visually Salient Speech Cues*,

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[15] http://aapca2.org/wp-content/uploads/2020/06/AAP-CA2-press-release-on-schools-re-opening-6-2-20-Rev.pdf

[16] https://link.springer.com/article/10.1007/BF00641052

Journal of Speech, Language, and Hearing Research, Vol. 58, 135–150, February 2015, **Exh. 17**;[17] see also Martin Wegrzyn , et al., *Mapping the emotional face. How individual face parts contribute to successful emotion recognition,* PLoS ONE 12(5): e0177239, May 11, 2017, **Exh. 18**;[18] Lawrence Brancazio et al., *Use of visual information in speech perception: Evidence for a visual rate effect both with and without a McGurk effect*, Perception & Psychophysics 2005, 67 (5), 759-769, **Exh. 19**;[19] Mustapha Skhiri, *Visual Cues in Speech Perception*, Department of Computer and Information Science, Linköping University, GSLT, LiTH 20001/3/02, **Exh. 20**.[20]

Voices of teachers and other students muffled through facemasks makes learning more difficult, especially for any child with a diagnosed or undiagnosed hearing impairment. See Amanda B. Silberer, PhD, et al., *Importance of High Frequency Audibility on Speech Recognition With and Without Visual Cues in Listeners with Normal Hearing*, Department of Communication Sciences and Disorders The University of Iowa, March 2014, **Exh. 21**.[21]

The Center for Disease Control ("CDC") has made clear that "Schools are an important part of the infrastructure of communities and play a critical role in supporting the whole child, not just their academic achievement." See *Preparing K-12 School Administrators for a Safe Return to School in Fall 2020. Guidance from the CDC to school Districts*, **Exh. 22**.[22] Nowhere in

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[17] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4712850/pdf/JSLHR-58-135.pdf
[18] https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0177239
[19] https://pubmed.ncbi.nlm.nih.gov/16334050/
[20] http://www.speech.kth.se/~rolf/gslt_papers/MustaphaSkiri.pdf
[21] https://haar.lab.uiowa.edu/sites/haar.lab.uiowa.edu/files/wysiwyg_uploads/silberer_bentler_wu_aas_2014.pdf
[22] https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/prepare-safe-return.html

the guidance provided to local schools by the CDC is any information about compelling students to wear face masks. In fact, the CDC acknowledges that "[m]ore research and evaluation is needed on the implementation of mitigation strategies (e.g., social distancing, masks, hand hygiene, and use of cohorting) used in schools to determine which strategies are the most effective." *Id.* at 5. The lack of any such recommendation is understandable given that the great weight of scientific evidence shows unmistakably that wearing facemasks for extended periods is harmful to people's health, safety and emotional well-being, especially to young children.

3. Wearing face masks as mandated by the AAA does NOT prevent the spread of the COVID-19 virus.

The AAA's mandate for Children to wear facemasks fails even a rational basis test, and is clearly not in a child best interest when assessed through a factual, evidence-based analysis, rather than a fear-based lens. It is simply not rational to believe that facemasks will be properly and studiously worn by young children for up to ten hours in a school day. In fact, the overwhelming weight of scientific literature to date establishes that facemasks do not prevent the spread of COVID-19 by, to, or from, children. See e.g., Patrick Saunders-Hastings, et, al., *Effectiveness of personal protective measures in reducing pandemic influenza transmission: A systematic review and meta-analysis,* Epidemics, v. 20 (September 2017) (finding "facemask use provided a non-significant protective effect . . . against 2009 pandemic influenza infection."), **Exh. 23**.[23] Dr. Russell Blaylock, a nationally recognized board-certified neurosurgeon, health practitioner,

[23] https://www.sciencedirect.com/science/article/pii/S1755436516300858

author, and lecturer warns that not only do face masks fail to protect the healthy from getting sick, but they also create serious health risks to the wearer. *See* Dr. Russell Blaylock, *Blaylock: Face Masks Pose Serious Risks To The Healthy,* Technocracy News & Trends, (posted May 11, 2020) **Exh. 24**.[24]

> [Recent studies] found that about a third of the [healthcare] workers developed headaches with use of the mask, most had preexisting headaches that were worsened by the mask wearing, and 60% required pain medications for relief. As to the cause of the headaches, while straps and pressure from the mask could be causative, the bulk of the evidence points toward hypoxia and/or hypercapnia as the cause. That is, a reduction in blood oxygenation (hypoxia) or an elevation in blood C02 (hypercapnia). It is known that the N95 mask, if worn for hours, can reduce blood oxygenation as much as 20%, which can lead to a loss of consciousness . . . . The importance of these findings is that a drop in oxygen levels (hypoxia) is associated with an impairment in immunity. Studies have shown that hypoxia can inhibit the type of main immune cells used to fight viral infections called the CD4+ T-lymphocyte. This occurs because the hypoxia increases the level of a compound called hypoxia inducible factor-1 (HIF-1), which inhibits T-lymphocytes and stimulates a powerful immune inhibitor cell called the Tregs. This sets the stage for contracting any infection, including COVID-19 and making the consequences of that infection much graver. In essence, your mask may very well put you at an increased risk of infections and if so, having a much worse outcome.

Id. See also Denis G. Rancourt, PhD, *Masks Don't Work: A review of science relevant to COVID-19 social policy*, Ontario Civil Liberties Association, April 11, 2020, **Exh. 25**:[25]

> There have been extensive randomized controlled trial (RCT) studies, and meta-analysis reviews of RCT studies, which all show that masks and respirators do not work to prevent respiratory influenza-like illnesses, or respiratory illnesses believed to be transmitted by droplets and aerosol particles.

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[24] https://www.technocracy.news/blaylock-face-masks-pose-serious-risks-to-the-healthy/
[25] https://www.researchgate.net/publication/340570735,

> Furthermore, the relevant known physics and biology, which I review, are such that masks and respirators should not work. It would be a paradox if masks and respirators worked, given what we know about viral respiratory diseases: The main transmission path is long-residence-time aerosol particles (< 2.5 μm), which are too fine to be blocked, and the minimum-infective-dose is smaller than one aerosol particle.

citing, Jacobs, J. L. et al. (2009) *Use of surgical face masks to reduce the incidence of the common cold among health care workers in Japan: A randomized controlled trial, American Journal of Infection Control*, Volume 37, Issue 5, 417 – 419 ("N95-masked health-care workers (HCW) were significantly more likely to experience headaches. Face mask use in HCW was not demonstrated to provide benefit in terms of cold symptoms or getting colds."), **Exh. 26**;[26] Cowling, B. et al., *Face masks to prevent transmission of influenza virus: A systematic review, Epidemiology and Infection*, 138(4), 449-456. doi:10.1017/S0950268809991658 2010, Exh. 27[27] ("None of the studies reviewed showed a benefit from wearing a mask, in either [Health Care Workers] or community members in households . . . ."); bin-Reza et al., *The use of masks and respirators to prevent transmission of influenza: a systematic review of the scientific evidence*, Influenza and Other Respiratory Viruses 6(4), 257–267, 2012, **Exh. 28**[28] ("There were 17 eligible studies. … None of the studies established a conclusive relationship between mask / respirator use and protection against influenza infection."); Offeddu, V. et al., *Effectiveness of Masks and Respirators Against Respiratory Infections in*

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[26] https://www.ncbi.nlm.nih.gov/pubmed/19216002
[27] https://www.cambridge.org/core/journals/epidemiology-and-infection/article/face-masks-to-prevent-transmission-of-influenza-virus-a-systematic-review/64D368496EBDE0AFCC6639CCC9D8BC05
[28] https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1750-2659.2011.00307.x

Healthcare Workers: A Systematic Review and Meta-Analysis, Clinical Infectious Diseases, Volume 65, Issue 11, 1 December 2017, Pages 1934–1942, **Exh. 29**[29] ("Self-reported assessment of clinical outcomes was prone to bias. Evidence of a protective effect of masks or respirators against verified respiratory infection (VRI) was not statistically significant"); Radonovich, L.J. et al., *N95 Respirators vs Medical Masks for Preventing Influenza Among Health Care Personnel: A Randomized Clinical Trial*, JAMA. 2019; 322(9): 824–833. doi:10.1001/jama.2019.11645, 2019, **Exh. 30** [30] ("Among 2862 randomized participants, 2371 completed the study and accounted for 5180 HCW-seasons. … Among outpatient health care personnel, N95 respirators vs medical masks as worn by participants in this trial resulted in no significant difference in the incidence of laboratory-confirmed influenza."); Long, Y. et al., *Effectiveness of N95 respirators versus surgical masks against influenza: A systematic review and meta-analysis*, J Evid Based Med. 2020; 1- 9, **Exh. 31**:[31]

> A total of six [Randomized Controlled Trials] involving 9171 participants were included. There were no statistically significant differences in preventing laboratory-confirmed influenza, laboratory-confirmed respiratory viral infections, laboratory-confirmed respiratory infection and influenza-like illness using N95 respirators and surgical masks. Meta-analysis indicated a protective effect of N95 respirators against laboratory-confirmed bacterial colonization. The use of N95 respirators compared with surgical masks is not associated with a lower risk of laboratory-confirmed influenza.
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> One of the largest studies on the effectiveness of facemasks on the transmission of

[29] https://doi.org/10.1093/cid/cix681
[30] https://jamanetwork.com/journals/jama/fullarticle/2749214
[31] https://doi.org/10.1111/jebm.12381

respiratory viruses, which was recently released by the CDC, is Jingyi Xiao, et al., *Nonpharmaceutical Measures for Pandemic Influenza in Nonhealthcare Settings— Personal Protective and Environmental Measures*, Emerging Infectious Diseases, Vol. 26, No. 5, (May 2020), **Exh. 32**.[32] This CDC meta-study analyzed numerous high-quality studies and found, as did virtually all other studies, that **facemasks provide no significant reduction to virus transmission**.

> In our systematic review, we identified 10 [Randomly Controlled Trials] that reported estimates of the effectiveness of face masks in reducing laboratory-confirmed influenza virus infections in the community from literature published during 1946–July 27, 2018. In pooled analysis, we found no significant reduction in influenza transmission with the use of face masks.
> . . .
> Disposable medical masks (also known as surgical masks) are loose-fitting devices that were designed to be worn by medical personnel to protect accidental contamination of patient wounds, and to protect the wearer against splashes or sprays of bodily fluids. There is limited evidence for their effectiveness in preventing influenza virus transmission either when worn by the infected person for source control or when worn by uninfected persons to reduce exposure. Our systematic review found no significant effect of face masks on transmission of laboratory-confirmed influenza.

Id. In fact, many physicians and researchers now believe that, because the ineffectiveness of facemasks in stemming the spread of Covid-19 is so widely known and acknowledged in the scientific and medical communities, the goal of widespread mask mandates is based entirely on fear and politics, not science. *See* Michael Klompas, M.D., M.P.H., et. al., *Universal Masking in Hospitals in the Covid-19 Era*, New England Journal of Medicine, N Engl J Med 2020; 382:e63

[32] https://wwwnc.cdc.gov/eid/article/26/5/19-0994_article

(May 21, 2020), **Exh. 33**: [33]

> We know that wearing a mask outside health care facilities offers little, if any, protection from infection. . . It is also clear that masks serve symbolic roles. Masks are not only tools, they are also talismans that may help increase health care workers' perceived sense of safety, well-being, and trust in their hospitals. Although such reactions may not be strictly logical, we are all subject to fear and anxiety, especially during times of crisis. One might argue that fear and anxiety are better countered with data and education than with a marginally beneficial mask . . . .

See also Lisa M Brosseau, ScD, Margaret Sietsema, PhD, *COMMENTARY: Masks-for-all for COVID-19 not based on sound data*, Center for Infectious Disease Research and Policy, University of Minnesota, April 1, 2020, **Exh. 34**:[34]

> We do not recommend requiring the general public who do not have symptoms of COVID-19-like illness to routinely wear cloth or surgical masks because:
>
> - There is no scientific evidence they are effective in reducing the risk of SARS-CoV-2 transmission
> - Their use may result in those wearing the masks to relax other distancing efforts because they have a sense of protection
> - We need to preserve the supply of surgical masks for at-risk healthcare workers.
>
> Sweeping mask recommendations—as many have proposed—will not reduce SARS-CoV-2 transmission, as evidenced by the widespread practice of wearing such masks in Hubei province, China, before and during its mass COVID-19 transmission experience earlier this year. Our review of relevant studies indicates that cloth masks will be

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[33] https://www.nejm.org/doi/full/10.1056/NEJMp2006372

[34] https://www.cidrap.umn.edu/news-perspective/2020/04/commentary-masks-all-covid-19-not-based-sound-data. Dr. Brosseau is a national expert on respiratory protection and infectious diseases and professor (retired), University of Illinois at Chicago. Dr. Sietsema is also an expert on respiratory protection and an assistant professor at the University of Illinois at Chicago.

> ineffective at preventing SARS-CoV-2 transmission, whether worn as source control or as PPE.

Id. at 5-6.

On June 4, 2020, the CDC published guidance indicating that masks do not deter the spread of Covid-19 after as little as fifteen minutes of exposure to someone with symptoms. CDC, *Public Health Guidance for Community-Related Exposure*, updated July 31, 2020, **Exh. 35**.[35] While recommending the wearing of masks for health professionals, the World Health Organization acknowledged that there is no evidence that mask wearing prevents the spread of Covid-19 and that the science simply does not support requiring otherwise healthy people to wear facemasks all day. "At present, there is no direct evidence (from studies on COVID-19 and in healthy people in the community) on the effectiveness of universal masking of healthy people in the community to prevent infection with respiratory viruses, including COVID-19." World Health Organization (WHO), *Advice on the use of masks in the context of COVID-19, Interim Guidance* (June 5, 2020) at 6, **Exh. 36**.[36] WHO also acknowledged some of the risks long-term mask use poses to health workers and others:

- self-contamination due to the manipulation of the mask by contaminated hands;
- potential self-contamination that can occur if medical masks are not changed when wet, soiled or damaged;
- possible development of facial skin lesions, irritant dermatitis or worsening acne, when used frequently for long hours
- masks may be uncomfortable to wear;

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[35] https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html

[36] https://www.who.int/publications/i/item/advice-on-the-use-of-masks-in-the-community-during-home-care-and-in-healthcare-settings-in-the-context-of-the-novel-coronavirus-(2019-ncov)-outbreak

- false sense of security, leading to potentially less adherence to well recognized preventive measures such as physical distancing and hand hygiene;
- risk of droplet transmission and of splashes to the eyes, if mask wearing is not combined with eye protection;
- disadvantages for or difficulty wearing them by specific vulnerable populations such as those with mental health disorders, developmental disabilities, the deaf and hard of hearing community, and children;
- difficulty wearing them in hot and humid environments.

Id. at 4.

On August 31, 2020, the SDE and Connecticut Department of Public Health ("DPH") released Addendum 11 to the AAA titled *Interim Guidance for the Use of Face Coverings in Schools during COVID-19*, ("Addendum 11"), **Exh. 37**.[37] Addendum 11 clarified the Defendants' reason for mandating children wear facemasks all day: "source control," i.e., to prevent the person wearing the mask from infecting others.

> Unlike traditional reasons for wearing a mask, which might include things like protecting the wearer from inhaling air contaminants such as dust, pollen, or chemicals, wearing a mask as a means of source control is meant to protect everyone the wearer comes into contact with from the respiratory droplets generated by that wearer . . . .

Addendum 11 at 1. However, if wearing a mask has any benefits at all, source control is certainly not one of them. Simply put, based on the ***actual science***, rather than the fear-induced perception of what the science could or should say, **facemasks are *completely ineffective*** in protecting against the very risk for which the Defendants are forcing small

[37] https://portal.ct.gov/-/media/SDE/COVID-19/Addendum11-Interim-Guidance-for-the-Use-of-Facemasks.pdf

children to wear facemasks all day: source control. See, e.g., Neil W. M. Orr, M.D., Mchir, FRCS, *Is a mask necessary in the operating theatre?*, Annals of the Royal College of Surgeons of England, vol. 63, 1981, **Exh. 38** [38] (**showing a significant *decrease* in the rate of patient infections when masks were *not* worn** in an operating theater for six months); Ritter, MA, et al., *The operating room environment as affected by people and the surgical face mask.* Clinical Orthopaedics and Related Research: September 1975 - Volume 111 - Issue - p 147-150, **Exh. 39** [39] ("The wearing of a surgical face mask had no effect upon the overall operating room environmental contamination. . . ."); Lipp, A. and Edwards, P., *Disposable surgical face masks for preventing surgical wound infection in clean surgery (Review)*, Cochrane Database of Systematic Reviews 2014, Issue 2. Art. No.: CD002929, **Exh. 40** [40] ("Three [randomized controlled] trials were included, involving a total of 2113 [surgical team] participants. There was no statistically significant difference in infection rates between the masked and unmasked group in any of the trials."); Vincent, M. & Edwards, P., *Disposable surgical face masks for preventing surgical wound infection in clean surgery,* Cochrane Database of Systematic Reviews 2016, Issue 4, Art. No.: CD002929, **Exh. 41** [41] ("All three [randomized controlled trials] showed that wearing a face mask during surgery neither increases nor decreases the number of wound infections occurring after surgery. We conclude that there is no clear evidence that wearing disposable

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[38] https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2493952/pdf/annrcse01509-0009.pdf

[39] https://journals.lww.com/clinorthop/Citation/1975/09000/The_Operating_Room_Environment_as_Affected_by.20.aspx

[40] https://www.cochranelibrary.com/cdsr/doi/10.1002/14651858.CD002929.pub2/epdf/full

[41] https://www.cochranelibrary.com/cdsr/doi/10.1002/14651858.CD002929.pub3/epdf/full

face masks affects the likelihood of wound infections developing after surgery."); Da Zhou et al., *Unmasking the surgeons: the evidence base behind the use of facemasks in surgery*, Journal of the Royal Society of Medicine; 2015, Vol. 108(6) 223–228, **Exh. 42** [42] (analyzing numerous studies)

> The use of surgical facemasks is ubiquitous in surgical practice. Facemasks have long been thought to confer protection to the patient from wound infection and contamination from the operating surgeon and other members of the surgical staff. . . . ***However, overall there is a lack of substantial evidence to support claims that facemasks protect either patient or surgeon from infectious contamination.***

(emphasis added); Zahid Mehmood Bahli, *Does evidence based medicine support the effectiveness of surgical facemasks in preventing postoperative wound infections in elective surgery?,* J Ayub Med Coll Abbottabad 2009; 21(2), **Exh. 43** [43] ("No significance difference in the incidence of postoperative wound infection was observed between masks group and groups operated with no masks. **There was no increase in infection rate in 1980 when masks were discarded. In fact there was significant *decrease* in infection rate**.") (emphasis added); Ana E. Figueiredo, et. al., *Bag Exchange in Continuous Ambulatory Peritoneal Dialysis Without Use of a Face Mask: Experience of Five Years*, Renal Unit, Hospital São Lucas, Porto Alegre, Brazil, **Exh. 44** [44] ("Peritonitis rates reported during our observation period are compatible with those seen in other centers and support the hypothesis that routine use of a face mask during CAPD bag exchange may be unnecessary.").; M.W. Skinner, B.A Sutton, *Do Anaesthetists Need to Wear*

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[42] https://journals.sagepub.com/doi/pdf/10.1177/0141076815583167
[43] http://www.ayubmed.edu.pk/JAMC/PAST/21-2/Zahid.pdf
[44] http://www.advancesinpd.com/adv01/21Figueiredo.htm

Surgical Masks in the Operating Theatre? A Literature Review with Evidence-Based Recommendations, Anaesthesia and Intensive Care, Vol. 29, No. 4, August 2001, **Exh. 45**: [45]

> The evidence for discontinuing the use of surgical face masks would appear to be stronger than the evidence available to support their continued use. . . . There is little evidence to suggest that the wearing of surgical face masks by staff in the operating theatre decreases postoperative wound infections. Published evidence indicates that postoperative wound infection rates are not significantly different in unmasked versus masked theatre staff. **However, there is evidence indicating a significant reduction in postoperative wound infection rates when theatre staff are unmasked. Currently there is no evidence that removing masks presents any additional hazard to the patient.**

(emphasis added).

While it may go against "conventional wisdom," and may seem counterintuitive to those who are not involved in scientific research, the actual scientific evidence does not support the proposition that wearing a mask is an effective method of source control to prevent the spread of infection. See Eva Sellden, M.D., Ph.D., *Is Routine Use of a Face Mask Necessary in the Operating Room?*, Anesthesiology 2010; 113:1447, the American Society of Anesthesiologists, Inc., **Exh. 46**,[46] ("Our decision to no longer require routine surgical masks for personnel not scrubbed for surgery is a departure from common practice. But the evidence to support this practice does not exist . . . .").

A July 2020 review by the University of Oxford, Centre for Evidence-Based Medicine

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[45] https://journals.sagepub.com/doi/pdf/10.1177/0310057X0102900402

[46] https://pubs.asahq.org/anesthesiology/article/113/6/1447/9572/Is-Routine-Use-of-a-Face-Mask-Necessary-in-the

found that there is no evidence that cloth masks are at all effective against virus infection or transmission. Jefferson, Tom & Heneghan, Carl, *Masking lack of evidence with politics*, Centre for Evidence-Based Medicine, July 23, 2020, **Exh. 47**.[47] An April 2020 review by the Norwich School of Medicine found that "the evidence is not sufficiently strong to support widespread use of facemasks", but supports the use of masks by "particularly vulnerable individuals when in transient higher risk situations." Brainard, et al., *Facemasks and similar barriers to prevent respiratory illness such as COVID-19: A rapid systematic review*, April 6, 2020, **Exh. 48**.[48] A July 2020 study by Japanese researchers found that ***cloth masks "offer zero protection against coronavirus."*** Naoya Kon, *Cloth face masks offer zero shield against virus, a study shows*, The Asahi Shimbun, study by Kazunari Onishi, **Exh. 49** [49] ("This experiment reconfirmed that wearing cloth and gauze masks can't prevent virus infection."). In an August 2020 article, Denis G. Rancourt, PhD, a Researcher, Ontario Civil Liberties Association, debunks supposed "studies" purporting to support compelled facemask use for the general population. See Rancourt, *Face masks, lies, damn lies, and public health officials: "A growing body of evidence"* August 2020, **Exh. 50** [50] ("[T]here is no policy-grade evidence to support forced masking on the general population, . . . all the latest-decade's policy-grade evidence points to the opposite: NOT recommending forced masking of the general population.");

No [randomized controlled trial] study with verified outcome shows a

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[47] https://www.cebm.net/covid-19/masking-lack-of-evidence-with-politics/
[48] https://www.medrxiv.org/content/10.1101/2020.04.01.20049528v1
[49] http://www.asahi.com/ajw/articles/13523664
[50] https://www.researchgate.net/publication/343399832_Face_masks_lies_damn_lies_and_public_health_officials_A_growing_body_of_evidence

> benefit for [health-care workers] or community members in households to wearing a mask or respirator. There is no such study. There are no exceptions.
>
> Likewise, no study exists that shows a benefit from a broad policy to wear masks in public (more on this below).
>
> Furthermore, if there were any benefit to wearing a mask, because of the blocking power against droplets and aerosol particles, then there should be more benefit from wearing a respirator (N95) compared to a surgical mask, yet several large meta-analyses, and all the RCT, prove that there is no such relative benefit.
>
> ***Masks and respirators do not work.***

(emphasis added); Denis G. Rancourt, PhD, *Masks Don't Work: A Review of Science Relevant to COVID-19 Social Policy*, River Cities Reader, June 11, 2020, **Exh. 51**. [51]; see also, Todd McGreevy, *Still No Conclusive Evidence Justifying Mandatory Masks*, River Cities Reader, August 12, 2020, Exh. 52.[52]

C. THE PLAINTIFFS AND THEIR CHILDREN ARE GUARANTEED A FREE PUBLIC EDUCATION

All children within the State of Connecticut have a fundamental right to an education as enshrined in Article Eighth of the Connecticut Constitution and recognized by the Connecticut Supreme Court in *Sheff v. O'Neill*, 238 Conn. 1, 21 (1996) ("Our Connecticut constitution … contains a fundamental right to education and a corresponding affirmative state obligation to implement and maintain that right."). Because a free public education is

[51] https://www.rcreader.com/commentary/masks-dont-work-covid-a-review-of-science-relevant-to-covide-19-social-policy
[52] https://www.rcreader.com/commentary/still-no-conclusive-evidence-justifying-mandatory-masks

guaranteed in the Connecticut Constitution, any impediments to receiving that education must have a compelling interest and be narrowly tailored to meet that interest. *Grutter v. Bollinger*, 539 U.S. 306 (2003). The Defendants' facemask mandate on children cannot meet either requirement.

D. THE PLAINTIFFS WILL SUCCEED ON THE MERITS

1. The Defendants Promulgated and Issued the Requirements Listed in the AAA Regarding the Use of Facemasks Pursuant to No Statutory or Regulatory Authority

The AAA mandates must be followed by the Children before they will be allowed admission to school to exercise their right to an in-person education. The legislative branch of the State of Connecticut has never declared these AAA mandates to be a condition precedent before a child is admitted access to a public school within this state. Nor has it ever found the AAA mandates to be safe for children or effective in preventing the spread of any disease or virus. Said another way, the legislative branch of the State of Connecticut has never declared the failure of a parent to subject their minor child to the AAA facemask mandates as a viable basis to exclude their child from having access to school within this state.

Without a duly-enacted law mandating the restrictions, upon grounds deemed sufficient by the legislature as necessary to protect the public health, an administrative board like the SDE has no power to make or enforce a rule or order as a condition of admission to, or attendance at Connecticut schools. When a rule is to be compulsorily applied, it must, like all civil regulations, be applied in conformity to law.

Conn. Gen. Stat. § 4-168(a) provides, in relevant part,

> (a) Except as provided in subsections (g) and (h) of this section, an agency, not less than thirty days prior to adopting a proposed regulation, shall (1) post a notice of its intended action on the eRegulations System, which notice shall include (A) a specified public comment period of not less than thirty days, (B) a description sufficiently detailed so as to apprise persons likely to be affected of the issues and subjects involved in the proposed regulation, (C) a statement of the purposes for which the regulation is proposed, (D) a reference to the statutory authority for the proposed regulation, (E) when, where and how interested persons may obtain a copy of the small business impact and regulatory flexibility analysis required pursuant to section 4-168a, and (F) when, where and how interested persons may present their views on the proposed regulation; (2) post a copy of the proposed regulation on the eRegulations System; (3) give notice electronically to each joint standing committee of the General Assembly having cognizance of the subject matter of the proposed regulation; (4) prior to January 1, 2017, give notice electronically or provide a paper copy notice, if requested, to all persons who have made requests to the agency for advance notice of its regulation-making proceedings; (5) provide a paper copy or electronic version of the proposed regulation to persons requesting it; and (6) prepare a fiscal note, including an estimate of the cost or of the revenue impact (A) on the state or any municipality of the state, and (B) on small businesses in the state, including an estimate of the number of small businesses subject to the proposed regulation and the projected costs, including, but not limited to, reporting, recordkeeping and administrative, associated with compliance with the proposed regulation and, if applicable, the regulatory flexibility analysis prepared under section 4-168a.

There is no evidence that the Defendants undertook any of the actions required by Conn. Gen. Stat. § 4-168(a) prior to the issuance of the AAA. Thus, the AAA mandates fail that most basic legal requirement.

> Conn. Gen. Stat. § 4-168(g) reads, in relevant part,
>
> (g) (1) An agency may proceed to adopt an emergency regulation in accordance with this subsection without prior notice, public comment period or hearing or upon any abbreviated notice, public comment period and hearing that it finds practicable if (A) the agency finds that

adoption of a regulation upon fewer than thirty days' notice is required (i) due to an imminent peril to the public health, safety or welfare or (ii) by the Commissioner of Energy and Environmental Protection in order to comply with the provisions of interstate fishery management plans adopted by the Atlantic States Marine Fisheries Commission or to meet unforeseen circumstances or emergencies affecting marine resources, (B) the agency states in writing its reasons for that finding, and (C) the Governor approves such finding in writing.

(2) The agency shall submit an electronic copy of the proposed emergency regulation to the standing legislative regulation review committee in the form prescribed in subsection (b) of section 4-170, together with a statement of the terms or substance of the intended action, the purpose of the action and a reference to the statutory authority under which the action is proposed. The committee may approve or disapprove the proposed emergency regulation, in whole or in part, not later than fifteen calendar days after its submission to the committee, at a regular meeting, if one is scheduled, or may, upon the call of either chairman or any five or more members, hold a special meeting for the purpose of approving or disapproving the regulation, in whole or in part. Failure of the committee to act on such regulation within such fifteen-day period shall be deemed an approval. If the committee disapproves such regulation, in whole or in part, it shall notify the agency of the reasons for its action. An approved emergency regulation shall be posted on the eRegulations System by the office of the Secretary of the State and shall be effective for a period of not longer than one hundred eighty days from the date it is approved or deemed approved and posted. Such one-hundred-eighty-day period may be extended an additional sixty days for emergency regulations described in subparagraph (A)(ii) of subdivision (1) of this subsection, provided the Commissioner of Energy and Environmental Protection requests of the standing legislative regulation review committee an extension of the renewal period at the time such regulation is submitted or not less than fifteen calendar days before the emergency regulation expires and the committee approves such extension. Failure of the committee to act on such request within fifteen calendar days shall be deemed an approval of the extension. Nothing in this subsection shall preclude an agency proposing an emergency regulation from adopting a permanent regulation that is identical or substantially similar to the emergency regulation, but such action shall not extend the effective

date of the emergency regulation.

There is no evidence that the Defendants undertook any of the actions required by Conn. Gen. Stat. § 4-168(g) prior to the issuance of the AAA.

The Defendants have also published no findings supporting "adoption of the [AAA] upon fewer than thirty days' notice is required (i) due to an imminent peril to the public health, safety or welfare . . . ." Nor could they, because the statistics published by the State of Connecticut itself clearly establish that, even if an "imminent peril to the public health, safety or welfare" once existed in Connecticut, there was no such "imminent peril" at the time the AAA was promulgated and there certainly is no such "imminent peril" now that could possibly justify compelling the Children to endure the physical and emotional trauma of wearing a facemask in order to receive their constitutionally guaranteed right to an education.

The DPH compiles and publishes the numbers of people who are tested for COVID-19 in Connecticut, people who test positive and negative for COVID-19 in Connecticut, people who are hospitalized due to COVID-19 and people who die from COVID-19 in Connecticut. As of May 1, 2020, the DPH reported that, in Connecticut, there were 2339 COVID-19 related deaths, and 1592 patients were hospitalized with COVID-19, **Exh. 53**.[53] As of May 31, 2020, DPH reported there had been 3964 COVID-19 related deaths (+1625 from the May 1, 2020 report) and 454 patients were hospitalized (-1138 from the May 1, 2020 report) **Exh. 54**.[54] As of June 30, 2020, DPH reported there had been 4324 COVID-19

[53] Connecticut Department of Public Health, "COVID-19 Update, May 1 2020."
[54] Connecticut Department of Public Health, "COVID-19 Update, June 1 2020."

related deaths (+364 from the May 31, 2020 report) and 100 patients were hospitalized (-354 from the May 31, 2020 report), **Exh. 55**.[55] As of August 31, 2020, it reported there had been 4466 COVID-19 related deaths (+142 from the June 30, 2020 report) and only 56 patients were hospitalized (-44 from the June 30, 2020 report) with COVID-19, **Exh. 56**.[56]

The State of Connecticut publishes data on the number of COVID-19 cases and deaths. These data can be found on the data.ct.gov web site. The following chart is published by the State of Connecticut as of September 23, 2020. **Exh. 57.** [57]

COVID-19 Cases and Deaths by Age Group

COVID-19 cases and associated deaths that have been reported among Connecticut

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DateUpdated	AgeGroups	Total cases	Confirmed cases	Probable cases	Total case rate	Total deaths	Confirmed deat...	Probable deaths
09/23/2020	0-9	1,126	1,093	33	297	1	1	0
09/23/2020	10-19	2,884	2,747	137	627	1	1	0
09/23/2020	20-29	8,018	7,705	313	1,720	4	4	0
09/23/2020	30-39	8,251	8,027	224	1,874	21	21	0
09/23/2020	40-49	7,851	7,616	235	1,783	58	46	12
09/23/2020	50-59	9,166	8,886	280	1,731	185	154	31
09/23/2020	60-69	7,240	7,023	217	1,673	555	471	84
09/23/2020	70-79	4,726	4,482	244	1,813	984	814	170
09/23/2020	80 and older	7,182	6,514	668	4,375	2,690	2,091	599

As show by the State's own data, only one single child between the ages of birth to nine years old has ever died of COVID-19 in Connecticut. Just one (*id.*) – out of over 230,000 Connecticut children in that age group. See *State and county population estimates by Age, Sex, Race and Hispanic Ethnicity*, Connecticut Department of Health, **Exh. 58**. [58] And it remains

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[55] Connecticut Department of Public Health, "COVID-19 Update, July 1 2020."
[56] Connecticut Department of Public Health, "COVID-19 Update, September 1, 2020."
[57] https://data.ct.gov/Health-and-Human-Services/COVID-19-Cases-and-Deaths-by-Age-Group/ypz6-8qyf/data
[58] https://authoring.ct.gov/DPH/Health-Information-Systems--Reporting/Population/Annual-State--County-Population-with-Demographics

questionable if even one death was actually caused by COVID-19. See Zach Murdock and Dave Altimari, *Questions remain about the death of a Hartford infant, despite governor's claim death was linked to coronavirus*, Hartford Courant, April 3, 2020, **Exh. 59**. [59] Assuming State's data are correct, there is only one single COVID-related death of a child between the ages of ten and nineteen years old since COVID-19 was first identified in Connecticut over nine months ago. See fn. 57. Just one – out of over 450,000 Connecticut children in that age group. *Id.* Without minimizing any child's death, the Court must recognize that there simply is not any imminent peril to children's health, safety or welfare.

In conjunction with the DPH, the Defendants published a document titled *CT School Learning Model Indicators*, **Exh. 60**.[60] Within *CT School Learning Model Indicators* is the following table:

Summary Table

September 3, 2020

	Leading		Secondary			
	New COVID-19 cases per 100,000 population per day (7-day average)	Leading Indicator Risk Category	Percent test positivity (7-day average)	New COVID-19 hospitalizations per 100,000 population per day (7-day average)	Percent COVID-19-like illness hospital ED visits (7-day average)	Secondary Indicators Risk Category
Fairfield	4.3	Low	1.5%	0.3	2.9%	Low
Hartford	3.6	Low	1.2%	0.5	1.0%	Low
Litchfield	4.1	Low	1.2%	0.2	1.0%	Low
Middlesex	2.7	Low	0.5%	0.4	1.0%	Low
New Haven	2.3	Low	0.7%	0.4	2.1%	Low
New London	2.0	Low	0.7%	0.3	1.3%	Low
Tolland	4.7	Low	2.0%	0.0	0.7%	Low
Windham	2.4	Low	1.1%	0.1	0.8%	Low
Connecticut	**3.4**	-	**1.0%**	**0.3**	**1.6%**	-

Data reported for the period Aug 23-29 based on data available as of Sept 2 at 8:30PM. Dates are based on date of specimen collection (cases and positivity), date of hospital admission, or date of ED visit. Case and test counts do not include cases and tests among people residing in congregate settings, such as nursing homes, assisted living facilities, or correctional facilities. All data are preliminary.

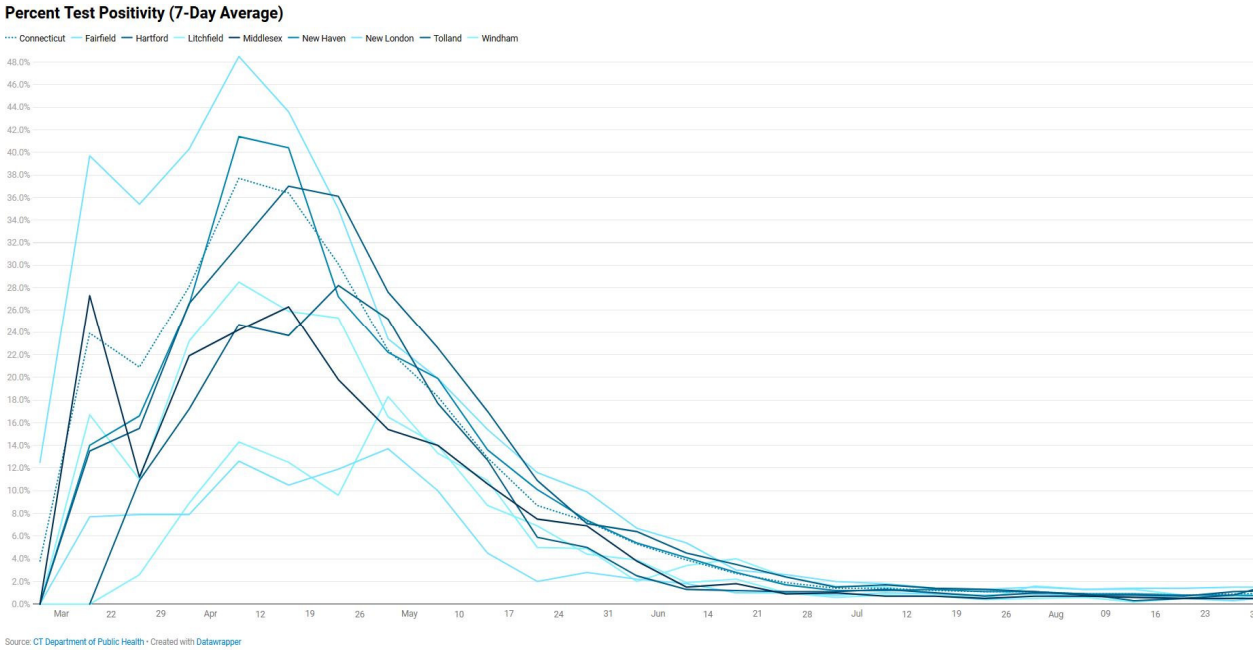
Source: CT Department of Public Health • Created with Datawrapper

[59] http://www.courant.com/breaking-news/hc-br-infant-death-coronavirus-positive-20200404-54z75ceqzfei7ajtwskc4ncrua-story.html.

[60] https://data.ct.gov/stories/s/CT-School-Reopening/ddy2-ijgu/.

Data shown as of September 3, 2020, site accessed September 9, 2020. *Id.* As shown in the table, as of September 3, 2020, the DPH and the SDE categorize both the Leading Indicator Risks and the Secondary Indicator Risks in every Connecticut County as "Low." *Id.* As shown in the table, the 7-day average of new COVID-19 cases statewide was only 3.4 per 100,000 population at the end of August 2020. *Id.*

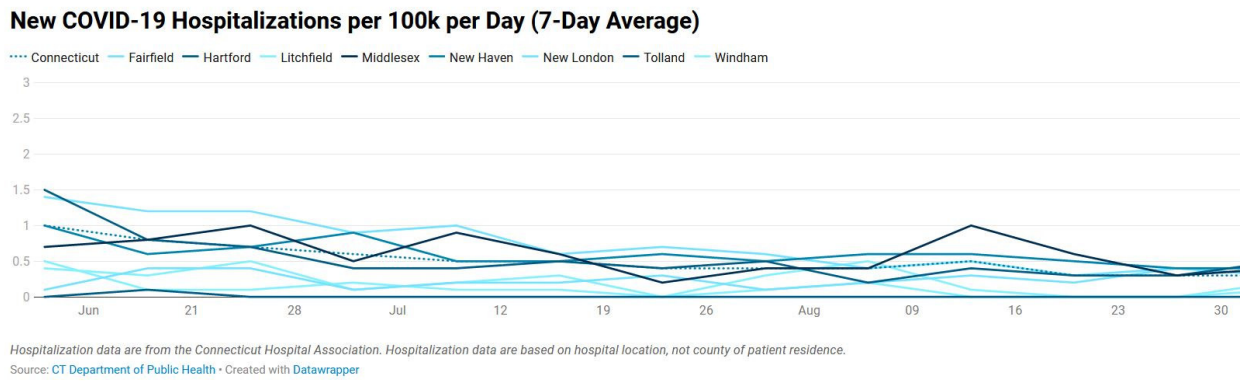
Within *CT School Learning Model Indicators* is the following graph:



Id. Data shown as of August 30, 2020, site accessed September 9, 2020. As shown in the table and the graph, the 7-day average of positive COVID-19 tests statewide was only 1.0% at the end of August 2020, down from a high of 37.7% on April 9, 2020. *Id.* As shown in the graph, the 7-day average of positive COVID-19 tests statewide has not exceeded 1.9% since June 25, 2020. *Id.* And these data are for people of all ages, not just school-aged children. *Id.* The

distribution of COVID-19 cases over time in Connecticut as shown on the graph mirrors almost exactly the distribution in virtually every region of the world, regardless whether a facemask mandate is imposed or not. See Andrew Atkeson et al., *Four Stylized Facts About Covid-19,* Working Paper 27719, National Bureau of Economic Research, August 2020, **Exh. 61**.[61] (Finding that the imposition or non-imposition of government-mandated non-pharmaceutical interventions, like lockdowns and mask mandates, has had virtually no effect on transmission rates worldwide.).

Within *CT School Learning Model Indicators* is the following graph as of August 30, 2020.



Exh. 60. As shown in the graph, the 7-day average of new hospitalizations due to COVID-19 is 0.3 per 100,000 population as of August 30, 2020. *Id.* As shown in the graph, the 7-day average of new hospitalizations due to COVID-19 statewide has not exceeded 0.5 per 100,000 in population since July 2, 2020. *Id.* There have been recent reports published by national media outlets indicating that COVID-19 numbers reported by the CDC have been greatly

[61] https://www.nber.org/papers/w27719.pdf

exaggerated to the high side. See, Allen, T. and Lott, J. *U.S. COVID-19 Death Toll Is Inflated,* Real Clear Politics, May 29, 2020, **Exh. 62**.[62] However, even assuming the statistics from the DPH are not exaggerated, DPH's own published data make clear that the risk of contracting COVID-19, the risk of being hospitalized due to COVID-19, and the risk of dying from COVID-19 in Connecticut from COVID-19 are exceedingly small. See Exh. 60. The risks are exponentially smaller for children. *Id.* As clearly shown in the Defendant's own tables and both graphs, since the Governor's original declaration of public health emergency on March 10, 2020, the COVID-19 "curve" has long since flattened. *Id.* Even if facemasks helped prevent the spread of COVID-19, which they do not, Connecticut school children simply are not at risk from COVID-19 and should not be forced to endure the physical and psychological harms of wearing masks for upwards of 10 hours per day.

The Defendant's own statistics show that there was no "imminent peril to the public health, safety or welfare" at the time the AAA was promulgated and there certainly is no such "imminent peril" now that could possibly justify compelling the Children to endure the physical and emotional trauma of wearing a facemask in order to receive their constitutionally guaranteed right to an education. The Defendants promulgated and issued the requirements listed in the AAA regarding the use of facemasks pursuant to no statutory or regulatory authority and this Court should not allow them to continue to subject children to its dangerous mandates.

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[62] https://www.realclearpolitics.com/articles/2020/05/29/us_covid-19_death_toll_is_inflated.html

2. Distance Learning is a constitutionally inadequate substitute for live, in-school instruction.

Remote learning has severe negative effects on students' educational attainment. A recent study found that due to school closures this past Spring, students likely achieved only "63–68% of the learning gains in reading relative to a typical school year," and only "37–50% of the learning gains in math." Megan Kuhfeld, *et al.*, *Projecting The Potential Impacts Of COVID-19 School Closures On Academic Achievement*, Brown University EdWorkingPaper No. 20-226, at 2, 23 (May 2020), **Exh. 63**.[63] Even those students receiving online learning of average quality for the upcoming Fall will lose "three to four months of learning" by the start of 2021, as compared to their peers receiving in-person education. Emma Dorn, et al., *COVID-19 And Student Learning In The United States: The Hurt Could Last A Lifetime*, McKinsey & Company, **Exh 64**: [64]

> Learning loss will probably be greatest among low-income, black, and Hispanic students. Lower income students are less likely to have access to high-quality remote learning or to a conducive learning environment, such as a quiet space with minimal distractions, devices they do not need to share, high-speed internet, and parental academic supervision.

Id. The findings showing lost learning by children engaged in distance learning are consistent with past research on remote learning. See James L. Woodworth, *et al.*, *Online Charter School*

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[63] https://www.edworkingpapers.com/sites/default/files/ai20-226-v2.pdf
[64] https://www.mckinsey.com/industries/public-and-social-sector/our-insights/covid-19-and-student-learning-in-the-united-states-the-hurt-could-last-a-lifetime

Study, Stanford Univ. Center for Research on Educ. Outcomes, 2015, **Exh. 65**,[65] and "could have long-term effects on these children's long-term economic well-being" Dorn, et. al. at 2, Exh. 64.

Limiting students to remote learning causes grave harms to their emotional and social development. *See* CDC, *The Importance of Reopening America's Schools This Fall* (July 23, 2020), **Exh. 66**.[66] ("[T]he harms attributed to closed schools on the social, emotional, and behavioral health, economic well-being, and academic achievement of children, in both the short- and long term, are well-known and significant. Further, the lack of in-person educational options disproportionately harms low-income and minority children and those living with disabilities."). When children are physically in school, they receive "supportive services" that can "identify and address important learning deficits as well as child and adolescent physical or sexual abuse, substance use, depression, and suicidal ideation," which are not available with remote-learning programs. *Id.*; American Academy of Pediatrics, *COVID-19 Planning Considerations: Guidance for School Re-Entry*, **Exh. 67**: [67]

> Families rely on schools to provide child care; a safe, stimulating space for children to learn; opportunities for socialization; and access to school-based mental, physical and nutritional health services. Without adequate support for families to access these services, disparities will likely worsen, especially for children who are English language learners, children with disabilities, children living in poverty, and children of African American/Black. Latinx/Hispanic and Native

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[65] https://credo.stanford.edu/sites/g/files/sbiybj6481/f/online_charter_study_final.pdf
[66] https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/reopening-schools.html
[67] https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/

> American/Alaska Native origin. **For children and adolescents in virtual learning models, educational disparities may widen further.** According to the Pew Research Center. 1 in 5 teenagers are not able to complete schoolwork at home because of lack of a computer or internet connection. **This technological "homework gap" disproportionately affects Black, Hispanic, and low-income families.**

Id. (emphasis added).

Shortly after the Los Angeles Unified School District shut down in March, it reported that "[a]bout 15,000 . . . high school students are absent online and have ***failed to do any school work***," while "more than 40,000 have not been in daily contact with their teachers." Howard Blume, *15,000 L.A. High School Students are AWOL Online, 40,000 Fail to Check In Daily Amid Coronavirus Closures*, L.A. Times, March 30, 2020, **Exh. 68** [68] (emphasis added). On an average day between mid-March and late-May 2020 in the Los Angeles Unified School District, "only about 36% of middle and high school students participated online," about 25% only "logged on or viewed work," and "about 40% were absent." *Report Reveals Disparities Among Black, Latino LAUSD Students In Online Learning Amid COVID-19 Pandemic*, ABC 7 Eyewitness News (July 17, 2020) **Exh. 69**.[69] The very same lack of student participation is happening in Connecticut under "distance learning" regimes. See, Adria Watson, *In New Haven schools, nearly a quarter of students aren't fully participating*, CT Mirror, (September 17, 2020)

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[68] https://www.latimes.com/california/story/2020-03-30/coronavirus-los-angeles-schools-15000-high-school-students-absent

[69] https://abc7.com/lausd-los-angeles-unified-school-district-race-disparity-racial-divide/6321930/

Exh.70.[70]

The science is clear: distance learning simply does not provide an adequate education or adequate educational supportive services for the Plaintiffs' children or the children of Connecticut. Thus, the Court should find, therefore, that distance learning is not a suitable alternative to in-school education for children who do not wear masks in school.

E. BALANCING THE EQUITIES FAVORS GRANTING THE INJUNCTION

As clearly established by the actual science and the defendants' own published data, facemasks do nothing to prevent the spread of COVID-19 and may actually make it worse. At the same time, mandatory facemask use puts children at great risk of severe physical and psychological injury. Thus, since any hypothetical benefits masks might be found to have are greatly overshadowed by the scientifically-established significant detrimental mental and psychological harm to the children, there is no need for the Court to look to balance equities. *Pack 2000, Inc. v. Cushman*, 198 Conn. App. 428 (2020). Based on the foregoing science, an appropriate balancing would nevertheless weigh overwhelmingly in the Plaintiffs' favor.

IV. CONCLUSION

Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendants are enjoined from implementing and enforcing the facemask requirement. Plaintiffs are entitled to declaratory relief and preliminary injunctive relief invalidating and restraining enforcement of the Defendants' facemask order.

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[70] https://ctmirror.org/2020/09/17/in-new-haven-schools-nearly-a-quarter-of-students-arent-fully-participating/

RESPECTFULLY SUBMITTED FOR THE PLAINTIFFS, BY:

/s/ Doug Dubitsky 417487

Doug Dubitsky, Esq.
LAW OFFICE OF DOUG DUBITSKY
P.O. Box 70
North Windham, CT 06256
Phone: 860-808-8601
Fax: 866-477-1120
Email: doug@lawyer.com

and

/s/Craig C. Fishbein 420267

Craig C. Fishbein, Esq.
FISHBEIN LAW FIRM, LLC
100 South Main Street
P.O. Box 363
Wallingford, Connecticut 06492
Phone: 203.265.2895
E-mail: ccf@fishbeinlaw.com

Their Attorneys

CERTIFICATION

The undersigned hereby certifies that a copy of this document has been forwarded to the following on the above date:

DARREN P CUNNINGHAM
AG-HEALTH AND EDUCATION
165 CAPITOL AVE 4TH FLR
HARTFORD, CT 06106

TIMOTHY JAMES HOLZMAN (441646)
AG-HEALTH AND EDUCATION
165 CAPITOL AVE 4TH FLR
HARTFORD, CT 06106

/s/Craig C. Fishbein 420267
Craig C. Fishbein, Esq.
Commissioner of Superior Court